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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

(Head notes prepared by M. P. Burks, State Reporter.)

CHESAPEAKE & OHIO RAILWAY CO. v. RODGERS' ADMINISTRATRIX.—

Decided at Wytheville, June 12, 1902.—*Harrison, J.*

1. EVIDENCE—*Irrelevant—Refusal to strike out—Instructions to disregard—Railroads—Signals.* In an action against a railroad company to recover damages for killing a person while walking on defendant's track, evidence of such person's knowledge of signals intended solely to secure the safety of persons and property on the trains of the defendant is impertinent, and should be excluded. The error in admitting such evidence, or in refusing to strike it out, is not cured by instructing the jury that if they believe the signals were for the use and guidance of the employees of the defendant, and not for the public, then the deceased could not rely on them.

2. INSTRUCTIONS—*Form—Negligence and contributory negligence.* Where the negligence of the defendant and the contributory negligence of the plaintiff are material elements of a case, the better practice is to state the relative duties of the plaintiff and the defendant in the same instruction, for, although instructions are to be read together, if the duties are stated separately in different instructions, some concluding with directions to find for the plaintiff in one view of the case, and others to find for the defendant in another view, the tendency is to confuse the jury.

3. RAILROADS—*Walking on track—Lookout—Negligence.* It is the duty of a person walking on a railroad track to listen and keep a constant lookout for approaching trains in order to avoid danger to himself, and the necessity for doing so is not relieved by the negligence, if any, of the railroad company, or its servants

4. INSTRUCTIONS—*Contributory negligence—Different aspects.* If, under the evidence, a plaintiff's contributory negligence may have consisted either in going upon a trestle, or in the failure to exercise due care after getting thereon, an instruction which limits it to the former is erroneous.

5. RAILROADS—*Trespassers—Licensees—Foresight—Frequented points.* Although a railroad company ordinarily owes no duty of foresight to trespassers on its track, still it is the duty of the company to use reasonable care to discover and not to injure persons (whether trespassers or licensees) whom it may reasonably expect to be on its track at a point which it knows has been, for years, in the constant and daily use, as a walkway, of a large number of persons in that vicinity.

6. INSTRUCTIONS—*Fully instructed.* It is not error to refuse instructions on points on which the jury have been already sufficiently instructed.

7. DEATH BY WRONGFUL ACT—*Elements of damage—Mental anguish.* In ascertaining the damages to be recovered by a wife for the wrongful death of her husband, the jury should consider all of the surrounding circumstances shown in evidence, the mental and physical anguish of the deceased, the mental

anguish of the wife, the loss of the solace and comfort growing out of the husband's death, and the business habits and earning capacity of the husband as affecting his capacity to earn a livelihood for his family.

8. CONTRIBUTORY NEGLIGENCE—*Discovery—Reasonable care.* The defendant under the evidence in this case, is liable for the injury inflicted on the plaintiff, notwithstanding the latter's contributory negligence, if, by the exercise of reasonable care it could have discovered and avoided such injury.

9. INSTRUCTIONS—*Evidence to support.* It is error to give an instruction when there is no evidence tending to support it.

MATHEWS V. GLENN.—Decided at Wytheville, June 12, 1902.—
Buchanan, J:

1. DELINQUENT LANDS—*Cloud on title—Redemption.* A person whose land has been sold for delinquent taxes and purchased by the State has no interest in the land except the right to redeem it, and cannot maintain a suit to remove a cloud upon the title. A tender of the purchase price, however, to a purchaser from the Commonwealth is not an offer to redeem, nor will a wrongful payment by such purchaser deprive the owner of the right to redeem.

NORFOLK RAILWAY & LIGHT CO. V. CORLETT.—Decided at Wytheville, June, 12, 1902.—*Buchanan, J:*

1. PLEADING—*Negligence—How charged—Street railways.* A declaration against a street car company which charged that the company so "negligently, carelessly, recklessly and improperly" managed its cars as to inflict the injury complained of upon the plaintiff who was in and upon the street of a city, sufficiently charges a breach of duty by the defendant without giving other particulars.

2. EXPERT EVIDENCE—*Street railways—Speed.* Expert testimony is admissible to show within what space a street car running under given conditions may be stopped.

3. STREET RAILWAYS—*Speed—Statutes—Ordinances—Negligence.* Statutes and municipal ordinances regulating the speed of railroad trains and street cars at certain places are made for the protection of travellers, and any violation of them is competent evidence of negligence in an action brought by a traveller on the highway, even though only a penalty is imposed for their violation.

4. STREET RAILWAYS—*Municipal regulations—Speed.* Street railway companies are subject to reasonable municipal or police control, and are bound by reasonable ordinances fixing rate of speed, though passed after they had obtained the right to run their cars upon the streets of the city.

5. INSTRUCTIONS—*Error—Effect on verdict.* It will be presumed that an erroneous instruction affected the verdict of the jury, and it will be set aside unless it appears from the whole record that the error did not affect, and could not have affected the verdict.